

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

NORTHERN REGIONAL OFFICE  
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**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
Pilot Travel Centers LLC  
FOR  
Flying J # 749  
VPDES Permit No. VA0092657**

**SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Pilot Travel Centers LLC, regarding the Flying J # 749 facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

**SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "BMP" means best management practice.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. “Discharge” means the discharge of a pollutant.
7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
  - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Facility” or “Site” means the Flying J # 749 facility, located at 24279 Roger Clark Boulevard, Ruther Glen, Virginia 22546, from which discharges of stormwater associated with industrial activity and oil/water separation activity occur.
10. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. “NRO” means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “OWS” means oil water separator.
14. “Permit” means VPDES Individual Permit No. VA0092657, which was issued under the State Water Control Law and the Regulation on August 1, 2018, and which expires on July 31, 2023.
15. “Pilot Travel Centers LLC” means Pilot Travel Centers LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Pilot Travel Centers LLC is a “person” within the meaning of Va. Code § 62.1-44.3.
16. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

17. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
18. "Registration statement" means a registration statement for coverage under a storm water general permit.
19. "Regulation" means the "Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation," 9 VAC 25-31.10, *et seq.*
20. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
21. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
22. "SWMP" means stormwater management pond.
23. "Va. Code" means the Code of Virginia (1950), as amended.
24. "VAC" means the Virginia Administrative Code.
25. "VPDES" means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. Pilot Travel Centers LLC owns and operates travel and refueling stations for private and commercial vehicles, including the Flying J # 749 Facility located at 24279 Roger Clark Boulevard, Ruther Glen, Virginia.
2. The Permit authorizes Pilot Travel Centers LLC to discharge process and stormwater associated with industrial activity from the Facility to an unnamed tributary of the North Anna River, in strict compliance with the terms and conditions of the Permit.

3. The North Anna River is located in the York River Basin. The North Anna River is listed in DEQ's 305(b) report as impaired for aquatic life use, due to pH, and recreational use, due to *E. coli*.
4. Part I.A.1.b of the Permit requires Pilot Travel Centers LLC to conduct monitoring of storm/process water discharges from the Facility's outfalls for the presence of pollutants of concern once during each monthly monitoring period, and record monitoring results on a DMR.
5. Pilot Travel Centers LLC reported exceedances in total recoverable petroleum hydrocarbon (reported 16.433 mg/L), and naphthalene (reported 23.3 µg/L) on the Facility's January 2021 DMR.
  - a. Permit Part I.A.1.b establishes a limit of 15 mg/L for total recoverable petroleum hydrocarbons, and a limit of 10 µg/L for naphthalene.
6. On February 5, 2021, DEQ was notified by the environmental contractor for Pilot Travel Centers LLC of the following violation: unauthorized discharge of an unknown quantity of emulsified diesel fuel from Outfall 002 into UT of North Anna River.
  - a. Permit Part II.F states, "Except in compliance with this permit, or another permit issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters... any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical, or biological properties of such waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
  - b. The State Water Control Law §62.1-44.34:18 states, "A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited."
  - c. The State Water Control Law §62.1-44.5 states, "A. Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses..."
7. During the DEQ inspection of the Facility on March 2, 2021, DEQ VPDES staff documented compliance deficiencies with respect to the requirements of the Permit, including the following:
  - a. (1.) Petroleum product was floating on the surface of the effluent chamber in the OWS; (2.) there appeared to be petroleum product in the OWS and stormwater drop inlet and on the embankment, and sediments laden in the SWMP; (3.) there

was a heavy petroleum aroma at the SWMP northern drop inlet; (4.) the overall condition, appearance, and management of the stormwater management pond (SWMP) best management practice (BMP) structure was poor; (5.) trash was observed along the embankment near Outfall 002; and (6.) the first boom, downstream from Outfall 002, contained accumulated sludge and foam attributed to petroleum products, and was in need of replacement.

- i. Permit Part III.C.2.d.(2) states, “Non-numeric technology-based effluent limits. The permittee shall implement the following types of control measures to prevent and control pollutants in the stormwater discharges from the facility... (a) Good Housekeeping... (b) Eliminating and Minimizing Exposure... (c) Preventative Maintenance... (d) Spill Prevention and Response Procedures... (g) Sediment and Erosion Control... (h) Management and Runoff...”

8. NRO issued a Warning Letter (WL # W2021-03-N-1029, issued March 23, 2021), and a Notice of Violation (NOV # W2021-04-N-0013, issued May 6, 2021), for the violations noted above.
9. Pilot Travel Centers LLC responded to the Warning Letter and Notice of Violation by submitting a report of corrective action to address the violations. The plan and schedule are incorporated in Appendix A of the Order.
10. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
11. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued coverage under permits or certificates to Pilot Travel Centers LLC in addition to that under VPDES Permit No. VA0092657, including Tank Facility ID 3007985.
14. The unnamed tributary of the North Anna River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. Based on the results of the file review and the March 2, 2021, inspection, the Board concludes that Pilot Travel Centers LLC has violated conditions Part II.F, Part III.C.2.d.2, and Part I.A.1.b of the Permit, and Va. Code §§ 62.1-44.5 and 62.1-44.34-18, as noted in paragraph C(1) through C(14) of this Order.
16. On July 6, 2021, Department staff met with representatives of Pilot Travel Centers LLC to discuss the violations, including Pilot Travel Centers LLC’s written response.

17. In order for Pilot Travel Centers LLC to complete its return to compliance, DEQ staff and Pilot Travel Centers LLC have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Pilot Travel Centers LLC, and Pilot Travel Centers LLC agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$18,725 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Pilot Travel Centers LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Pilot Travel Centers LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Pilot Travel Centers LLC for good cause shown by Pilot Travel Centers LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Pilot Travel Centers LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Pilot Travel Centers LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Pilot Travel Centers LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Pilot Travel Centers LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Pilot Travel Centers LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Pilot Travel Centers LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Pilot Travel Centers LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will

result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Pilot Travel Centers LLC. Nevertheless, Pilot Travel Centers LLC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Pilot Travel Centers LLC has completed all of the requirements of the Order;
  - b. Pilot Travel Centers LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Pilot Travel Centers LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Pilot Travel Centers LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Pilot Travel Centers LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Pilot Travel Centers LLC certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Pilot Travel Centers LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Pilot Travel Centers LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.



And it is so ORDERED this 15<sup>th</sup> day of November, 2021.



Thomas A. Faha, Regional Director  
Department of Environmental Quality

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Pilot Travel Centers LLC voluntarily agrees to the issuance of this Order.

Date: 9/20/21 By: [Signature], Director, Environmental  
(Person) (Title)  
Pilot Travel Centers LLC

Commonwealth of ~~Virginia~~ Tennessee  
City/County of Knox

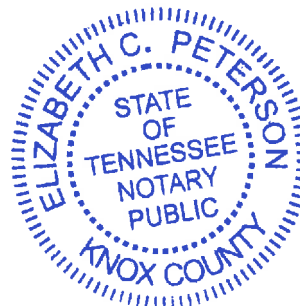
The foregoing document was signed and acknowledged before me this 20 day of  
September, 2021, by Joey Cupp who is  
Director, Environmental of Pilot Travel Centers LLC, on behalf of the company.

[Signature]  
Notary Public  
N/A  
Registration No.

My Commission Expires October 7, 2024

My commission expires: \_\_\_\_\_

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

**1. Stormwater Management Pond – Pilot Travel Centers LLC shall...**

- a. Within 7 days of the execution of this Order, submit to DEQ-NRO photographic evidence and a narrative describing the corrective actions related to SWMP condition restoration, including: removal of overgrown vegetation, removal of sediments and impacted materials, removal of trash from the pond and outfall, and an updated status of the use of oil booms in the receiving stream.
- b. Within 7 days of the execution of this Order, submit to DEQ-NRO an updated SWMP maintenance schedule to address future maintenance and upkeep.

**2. DEQ Contact**

Unless otherwise specified in this Order, Pilot Travel Centers LLC shall submit all requirements of Appendix A of this Order to:

**Virginia Department of Environmental Quality  
Northern Regional Office  
Attn: Enforcement  
13901 Crown Court  
Woodbridge, VA 22193**